

MEMORANDUM ENDORSEMENT

Paul Goodman v. Martin Wade, et al.

08 Civ 2851 (LLS)

Defendants move to dismiss this action, or in the alternative, transfer it to the United States District Court for the Central District of California. Plaintiff Paul Goodman moves to remand this action to the Supreme Court of the State of New York, New York County.

Goodman brings this defamation action based on defendants' statements in a Schedule 14C Information Statement filed with the Securities and Exchange Commission. On January 16, 2008, Goodman commenced this action in the New York State Supreme Court and on March 18, 2008, defendant Broadcaster, Inc. removed it to this Court pursuant to 28 U.S.C. § 1441.

The basic Statement giving rise to the defamation claim stated:

On December 21, 2007, record holders of 29,777,137 shares of our Common Stock, representing approximately 58% of such Common Stock outstanding as of December 21, 2007, executed and delivered a written consent providing for the removal without cause of two directors, Dr. Vincent Orza and Paul Goodman from their positions on our Board of Directors. Although the removal of the two directors is being effected without cause, it is motivated by the shareholders' lack of confidence in the business judgment of the two directors being removed. Such lack of confidence is the result of recent conversations between the shareholders and the directors and the fact that based upon their biographies and conversations, neither Dr. Vincent Orza nor Paul Goodman has any prior experience in managing companies in the media industry.

Cmplt. ¶ 18. Goodman alleges that defendants also published repetitions of the Statement, with various elaborations.

The sole basis for removal to this Court is the assertion that it has diversity jurisdiction. Without diversity of citizenship, this Court has no subject-matter jurisdiction over this matter.

Plaintiff Paul Goodman is a New York resident and six of the defendants are New York residents (Gary Herman, Bruce Galloway, Thomas Kikis, Kikis Family Foundation, Strategic Turnaround Equity Partners, LP (Cayman), and Digital Creative Development Corp.). Notice of Removal §§ 6-7. Defendants argue that "Although Plaintiff's complaint names defendants whose state of citizenship prevents complete diversity, these defendants are wholly unnecessary to the lawsuit and are, at best, either nominal or improperly joined defendants, whose presence does not defeat diversity." Id. at ¶ 7. Defendants state that "All of the non-diverse defendants are shareholders of Broadcaster, and are named solely in their capacity as shareholders of Broadcaster." Id.

Whether "as shareholders of Broadcaster" or not, each of the New York defendants is joined in the complaint as part of the group who authorized the alleged defamatory statements. See Complt. ¶¶ 18-23 ("the consenting shareholders have expressed a lack of confidence in the business judgment of the two directors being removed"; "Such lack of confidence is the result of recent conversations between the shareholders and the directors"; "In forming their judgment, the consenting shareholders considered that, based upon their biographies and the above referenced conversations, neither Dr. Vincent Orza nor Paul Goodman has any prior experience . . ."). Thus each of them is claimed to be responsible for the allegedly defamatory statements, and is a proper defendant.

Therefore, there is not complete diversity between the plaintiff and defendants, and this Court lacks jurisdiction.

CONCLUSION

The Clerk is directed to remand this action to the Supreme Court of the State of New York, New York County.

So ordered.

DATED: New York, New York
June 26, 2008

Louis L. Stanton
LOUIS L. STANTON
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

PAUL GOODMAN,

Plaintiff,

-against-

08 CV 2851 (LLS)

MARTIN WADE, NOLAN QUAN, BLAIR MILLS,
BROADCASTER, INC., GARY HERMAN, BRUCE
GALLOWAY, THOMAS KIKIS, KIKIS FAMILY
FOUNDATION, WILLOW CREEK CAPITAL
MANAGEMENT, TRINAD CAPITAL MASTER
FUND, LTD., AARON BROWN, ANDREW GARRONI,
STRATEGIC TURNAROUND EQUITY PARTNERS, LP
(CAYMAN) AND DIGITAL CREATIVE DEVELOPMENT
CORPORATION,

Defendants.

X

PLAINTIFF'S CROSS- MOTION TO REMAND

PLEASE TAKE NOTICE that plaintiff pro se Paul Goodman, will move, and hereby moves this Court, pursuant to 28 U.S.C. §1447, for an order remanding this action to New York State Supreme Court together with the just costs and any actual expenses, including attorneys fees, together with such other and further relief as this Court deems just and proper.

Dated: June 5, 2008



The image shows a handwritten signature in black ink, appearing to read "Paul Goodman". Below the signature, the name "Paul Goodman" is printed in a smaller, standard font.

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COURTESY COPY

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*Attorneys for Defendants
Martin Wade, Nolan Quan and Blair Mills*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

X

PAUL GOODMAN, :
Plaintiff, :
-against- :
Case No.: 08-cv-2851
MARTIN WADE, NOLAN QUAN, BLAIR MILLS,
BROADCASTER, INC., GARY HERMAN, BRUCE
GALLOWAY, THOMAS KIKIS, KIKIS FAMILY
FOUNDATION, WILLOW CREEK CAPITAL
MANAGEMENT, TRINIDAD CAPITAL MASTER
FUND, LTD., AARON BROWN, ANDREW GARRONI,
STRATEGIC TURNAROUND EQUITY PARTNERS, LP
(CAYMAN) and DIGITAL CREATIVE DEVELOPMENT
CORPORATION, :
NOTICE OF MOTION

Defendants.

- X

PLEASE TAKE NOTICE, that upon the accompanying Declaration of Michael P. Zweig, with exhibits, dated May 21, 2008, the accompanying Declaration of

Leslie Marlow, with exhibits, dated May 21, 2008, and the accompanying memorandum of law, Defendant Broadcaster, Inc., by their attorneys Loeb & Loeb LLP, and Defendants Martin Wade, Nolan Quan and Blair Mills, by their attorneys Howrey LLP, will move this Court as soon as counsel can be heard before Hon. Louis L. Stanton at the United States Courthouse located at 500 Pearl Street, New York, New York 10007 for an Order pursuant to Rule 12(b)(6), Rule 12(b)(2) and Rule 12(b)(5) of the Federal Rules of Civil Procedure dismissing the complaint in this action or, in the alternative, for an Order pursuant to 28 U.S.C. §1404 transferring this action to the United States District Court for the Central District of California.

PLEASE TAKE FURTHER NOTICE that, pursuant to agreement of counsel, answering papers shall be filed and served no later than June 4, 2008.

Dated: New York, New York
May 21, 2008

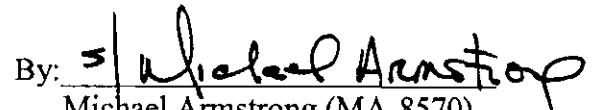
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